

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3865 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

MANOJBHAI MELABHAI NAIK

Versus

COLLECTOR OF AHMEDABAD

Appearance:

MR RN SHAH for Petitioners

MR. S.T.MEHTA, ASSTT.GP for Respondent No. 1, 2

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 23/10/97

ORAL JUDGEMENT

Rule.

(2) Service of Rule is waived by Mr. S.T.Mehta, learned Assistant Government Pleader appearing for the respondents. In the facts and circumstances of the case, the matter is taken up for final hearing today.

(3) This petition challenges the order dated November 2, 1996 passed by the State of Gujarat rejecting the appeal filed by the petitioners against the order dated December 26, 1995 passed by the Collector, Ahmedabad under section 6A of the Essential Commodities Act confiscating renfet chemicals (petroleum solvent) of the value of Rs. 96,000/- and the tanker bearing No. GJ-6T-5418 of the value of Rs. 2,00,000/-.

(4) At the hearing of the petition, learned advocate for the petitioner submitted that the impugned orders are passed by the authorities on the basis of surmises and conjectures and that merely because some other parties may be adulterating petroleum solvent with petrol, that cannot be a ground for holding the petitioner guilty of the charge that the petroleum solvent lying in the said tanker belonging to petitioner No. 2 and was taken on hire by petitioner No. 1 a carting contractor was being used for adulteration with petrol. It is submitted that the charge against the petitioners is mere violation of clause 18(4)(i) of the Gujarat Essential Articles (Licencing, Control and Stock Declaration) Order, 1981 (hereinafter referred to as "the Licensing Order ") which reads as under:

"18.(4) (i) Every producer, or as the case may be, wholesaler shall issue to every transport operator transporting the stock of any essential article from his installation or depot or the place of storage, a correct invoice or a gate pass, as the case may be, showing the producer's or wholesaler's name, address, the name and address of the consignee, the date and time of the delivery and quantity delivered and shall keep a duplicate of the same to be made available for inspection on demand by any officer specified in clause 26, or as the case may be by any officer authorized in this behalf."

To complete the quotation of sub clause (4), which (ii) reads as under :

"18 (4)(ii) Every transport operator to whom an invoice or a gate pass, as the case maybe, issued by a producer, or a wholesaler under paragraph (1) shall, where the stock of the essential article is in transit, retain with him such invoice or gate pass and make it available for inspection on demand by any officer specified in clause 26 or the authorized officer and shall

deliver the same to the consignee dealer at the time of delivery of such stocks. "

(5) In response to the notice, Mr. Mehta, learned Assistant Government Pleader has appeared and has submitted that the authorities have thoroughly examined the matter and found that in view of the material contradictions between the statement of the owner and the driver of the tanker, and also in view of the investigations made by the authorities, it has transpired that the explanation given by the tanker driver as well as the owner have been found to be incorrect. There was no occasion for the tanker driver to bring the tanker within the limits of the Ahmedabad Municipal Corporation and that too near a petrol pump in Ahmedabad when the tanker was supposed to be carrying the petroleum solvent from Malad in Mumbai to Khatraj in Mehsana District. The case of the driver was that the tanker was initially taken to Khatraj where the consignee Company was found to be closed and, therefore, the tanker was to be taken back and on the return journey, the tanker was brought within the limits of the Ahmedabad Municipal Corporation. This explanation has not been accepted by the authorities because the driver would have obtained octroi entry pass when he entered the limits of Ahmedabad Municipal Corporation for going to Khatraj and thereafter he would have obtained another octroi entry pass when he returned from Khatraj to Ahmedabad. No such entry passes were found from the driver of the tanker. Similarly the driver's case that he had gone to meet his sister in Odhav was also not substantiated.

(6) In view of the above, it cannot be said that the findings of fact recorded by the authorities that petroleum solvent was being carried in violation of the provisions of subclause (4) of clause 18 of the Licensing Order and was near a petrol pump and, therefore, in all probability, was taken there for the purposes of adulteration of the petrol cannot be held to be perverse or arbitrary. It is not necessary for proving such charge that the person should be actually found red handed while mixing the petroleum solvent with the petrol. If there is circumstantial evidence to prove that charge, the authorities can rely on such circumstantial evidence.

(7) The next question is whether the authorities were justified in passing the order of confiscation for the petroleum solvent of the value of Rs.96000/- and the value of the tanker of Rs.2,00,000/-. As far as the confiscation of the quantity of petroleum solvent is

concerned, there is no doubt that the entire quantity being 7200 kg. of the value of Rs.96,000/- was required to be confiscated. However, as far as the confiscation of the tanker is concerned, Mr. Shah has submitted that the value of the tanker was only about Rs.1,25,000/- as it is about ten years old and that since the tanker was not belonging to the owner of the petroleum solvent but petitioner no. 1 is an independent carting contractor who had taken the tanker on hire from its owner petitioner No. 2, for carrying the commodity in question without knowing the purpose for which the commodity was being carried, it appears that the amount which should be subjected to confiscation should not exceed the value of the commodity which is confiscated.

(8) I have heard the learned counsel for the parties on the aforesaid aspect. Both the learned counsel have submitted that the Court may pass appropriate orders in this regard fixing the amount. In the facts and circumstances of the case, it, therefore, appears that while holding that the confiscation of the entire petroleum solvent valued at Rs.96,000/- is justified, but the confiscation value for the tanker should have been confined to the amount of Rs.96,000/-.

(9) In view of the above discussion, the orders of the Collector Ahmedabad as well as the State Government in appeal at Annexure "E" and "F" are confirmed in so far as the order of confiscation of petroleum solvent of the value of Rs.96000/- is concerned. The order of confiscation of the tanker of value of Rs.2,00,000/- is modified to the effect that the confiscation shall be confined to the value of Rs. 96,000/- only i.e. in all, the confiscation is upheld for an aggregate amount of Rs. 1,92,000/- only (Rs.96,000+ Rs.96,000) instead of Rs.2,96,000/-. In view of the above, petitioners' bank guarantee for the balance amount may be released.

(10) Rule is made absolute to the above extent with no order as to costs.

Vyas